



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC-2011-0018]

RIN 3150-AI49

**Enhanced Weapons, Firearms Background Checks,
and Security Event Notifications**

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing regulations that would implement its authority under Section 161A of the Atomic Energy Act of 1954, as amended (AEA), and revise existing regulations governing security event notifications. The NRC proposed new regulations on February 3, 2011, that would implement its authority under Section 161A. The NRC is now proposing to further revise its regulations that address the voluntary application for enhanced weapons authority, preemption authority, and the mandatory firearms background checks under Section 161A to include as a class of designated facilities at-reactor, independent spent fuel storage installations (ISFSIs).

DATES: Submit comments on this supplemental proposed rule by **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Submit comments specific to the information collection burden aspects of this supplemental proposed rule by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after these

dates will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before these dates.

ADDRESSES: You may access information and comment submissions related to this supplemental proposed rule, which the NRC possesses and are publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2011-0018. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0018**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret E. Stambaugh, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7069; e-mail: Margaret.Stambaugh@nrc.gov; or Mr. Philip Brochman,

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Washington, DC 20555-0001; telephone: 301-415-6557; e-mail: Phil.Brochman@nrc.gov .

SUPPLEMENTARY INFORMATION:

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I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2011-0018** when contacting the NRC about the availability of information for this supplemental proposed rule. You may access information related to this supplemental proposed rule, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2011-0018**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section VIII, "Availability of Documents," of this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2011-0018** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

A. Implementation of Section 161A of the AEA

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (EPAct), Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the EPAct amended the AEA by adding Section 161A, "Use of Firearms by Security Personnel" (42 U.S.C. 2201a). Section 161A of the AEA provides the NRC with authority that will enhance security at designated NRC licensee and certificate holder facilities. As required by Section 161A.d, the provisions of Section 161A took effect when the Commission, with the approval of the U.S. Attorney General,

published the approved Firearms Guidelines in the Federal Register (FR) on September 11, 2009 (74 FR 46800). The issued Firearms Guidelines may be found on <http://www.regulations.gov> under Docket IDs NRC-2008-0465 and NRC-2011-0018.

Section 161A requires the Commission to designate the classes of facilities, radioactive material, and other property eligible to apply for preemption or enhanced weapon authority. Section 161A also mandates that all security personnel with duties requiring access to covered weapons, as defined in the Firearms Guidelines, who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder, be subject to a fingerprint-based background check by the U.S. Attorney General and a firearms background check against the Federal Bureau of Investigation's (FBI) National Instant Background Check System (NICS).

B. October 2006 Proposed Rule – Implementation of Section 161A of the AEA

In parallel with the development of the Firearms Guidelines, the NRC initiated a rulemaking to develop implementing regulations. On October 26, 2006, the NRC published proposed regulations (71 FR 62664) to implement the provisions of Section 161A as part of a larger proposed amendment to its regulations under parts 50, 72, and 73 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Power Reactor Security Requirements." These proposed implementing regulations were based upon the draft version of the Firearms Guidelines that existed in September 2006.

The NRC had proposed that the provisions of Section 161A would apply only to power reactor facilities and Category I Strategic Special Nuclear Material (Cat. I SSNM) facilities (i.e., facilities possessing or using formula quantities or greater of strategic special nuclear material). This would permit these two highest risk classes of licensed facilities to apply to the NRC for Section 161A authority (either combined enhanced weapons authority and preemption authority

or stand-alone preemption authority). The NRC had also indicated that it would consider making Section 161A authority available to additional classes of facilities, radioactive material, or other property (including ISFSIs) in a separate, future rulemaking.

C. February 2011 Proposed Rule – Implementation of Section 161A of the AEA

Once the approved Firearms Guidelines were published in the FR on September 11, 2009 (74 FR 46800), the NRC continued developing the proposed rulemaking based upon the Firearms Guidelines. On February 3, 2011, the NRC published proposed regulations in the FR (76 FR 6200) that would implement the provisions of Section 161A and make several changes to the security event notification requirements in 10 CFR Part 73 to address imminent attacks or threats against power reactors as well as suspicious events that could be indicative of potential reconnaissance, surveillance, or challenges to security systems by adversaries. The public was provided a total of 180 days to review and comment on the February 2011 proposed rule and associated guidance.

III. Discussion

Section 161A allows the NRC to authorize licensees and certificate holders to use, as part of their protective strategies, an expanded arsenal of weapons, including machine guns and semi-automatic, large-capacity, assault weapons. As indicated in the February 2011 proposed rule, an NRC licensee or certificate holder interested in obtaining Section 161A authority (either combined enhanced weapons authority and preemption authority or preemption authority alone) could voluntarily apply to the NRC to take advantage of this new authority. Licensees and certificate holders within the designated classes eligible to apply for Section 161A authority

would be required to complete the firearms background check requirements mandated by Section 161A and the Firearms Guidelines.

In a recent letter, a licensee requested that the NRC grant preemption authority for two operating power reactors and the at-reactor ISFSI co-located at the plant site (ADAMS Accession No. ML113610556). The February 2011 proposed rule did not contemplate at-reactor ISFSIs under the applicability statement, but rather identifies ISFSIs as a class of facility that would be considered for inclusion under a future rulemaking. The staff's intent in the February 2011 proposed rule was first to establish the regulatory framework for granting preemption and enhanced weapons authority to those facilities deemed to be of greatest significance (i.e., power reactors and Cat. I SSNM facilities). In light of the request from the licensee, the staff recommended to the Commission in SECY-12-0027 (ADAMS Accession No. ML113130015) that at-reactor ISFSIs be designated as a class of licensees eligible to apply for the authority granted under Section 161A. In Staff Requirements Memorandum SRM-SECY-12-0027 (ADAMS Accession No. ML12124A377), the Commission disapproved the staff's recommendation in SECY-12-0027 regarding the issuance of confirmatory orders for at-reactor ISFSIs. Instead, the Commission directed the staff to consider expanding the scope of the current enhanced weapons rule to include at-reactor ISFSIs. This supplemental proposed rule responds to the Commission's direction.

In this supplemental proposed rule, the NRC would add at-reactor ISFSIs to the scope of the enhanced weapons proposed rule. The NRC considers an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR Parts 50 or 52. As previously noted, the NRC is taking this approach to address the facilities of highest concern first. At-reactor ISFSIs have been added to the facilities of highest concern because the same security personnel and weaponry that protect a power reactor, also protect the at-reactor ISFSI. An ISFSI that is co-located with a

power reactor facility that has been decommissioned (i.e., the power complex and spent fuel pool have been removed), but has not yet terminated its reactor license, does not rely on the power reactor security force to implement its protective strategy. Therefore, an ISFSI co-located at a decommissioned power reactor is not considered an at-reactor ISFSI for the purposes of this supplemental rule. The NRC considers this approach consistent with that for a standalone ISFSI, which was never co-located with a power reactor.

The February 2011 proposed rule recommends adding two new sections to 10 CFR Part 73. The proposed § 73.18(c) would identify the specific classes of licensee facilities, radioactive material, and other property designated by the Commission under Section 161A that would be eligible to apply for stand-alone preemption authority or for combined enhanced weapons authority and preemption authority. The proposed § 73.19(c) would identify the specific classes of facilities, radioactive material, and other property designated by the Commission under Section 161A that would be subject to the firearms background check requirements. In this supplemental proposed rule, the NRC would designate three classes of facilities as subject to the requirements of proposed §§ 73.18 and 73.19: power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities.

In the February 2011 proposed rule that would implement the Firearms Guidelines, the NRC proposed amendments to 10 CFR Part 73 by adding new definitions, processes for obtaining enhanced weapons, requirements for firearms background checks, and event notification requirements for stolen or lost enhanced weapons. This supplemental proposed rule continues those proposed changes and adds to or modifies the following regulations in 10 CFR Part 73:

- Section 73.2, Definitions.
- Section 73.18, Authorization for use of enhanced weapons and preemption of firearms

laws.

- Section 73.19, Firearms background checks for armed security personnel.
- Section 73.51, Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

IV. Section-by-Section Analysis

A. Overview

The following section-by-section analysis discusses proposed revisions to the NRC's regulations that were not part of the proposed rule published on February 3, 2011 (76 FR 6200). At this time, the NRC is only seeking comments on the revisions proposed by this supplemental rule. The NRC will address public comments on both the February 2011 proposed rule and this supplemental proposed rule in the *Federal Register* notice for the final rule.

This supplemental proposed rulemaking to 10 CFR Part 73 would revise two new sections (§§ 73.18 and 73.19) proposed to be added to the NRC's regulation in the February 2011 rule, and revise two existing sections (§§ 73.2 and 73.51) to make conforming changes.

B. Definitions (§ 73.2)

New definition for the term *At-reactor independent spent fuel storage installation* or *at-reactor ISFSI* would be added in alphabetical order to the definitions in § 73.2(a). The NRC would consider an at-reactor ISFSI to be an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under 10 CFR Parts 50 or 52.

C. Authorization for use of enhanced weapons and preemption of firearms laws (§ 73.18)

Paragraph (c) would list the designated classes for either stand-alone preemption authority or combined enhanced weapons authority and preemption authority. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC continues to intend to specify any additional classes of authorized facilities, radioactive material, and other property in a separate, future rulemaking.

D. Firearms background checks for armed security personnel (§ 73.19)

In paragraph (c), the NRC would designate the classes of facilities, radioactive material, and other property that are appropriate for firearms background checks. In addition to the classes of facilities identified in the February 2011 proposed rule, the NRC would include at-reactor ISFSIs within the designated classes. The NRC intends to specify any additional classes of authorized facilities, radioactive material, and other property in a separate, future rulemaking.

E. Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste (§ 73.51)

In paragraph (b)(4), the NRC would add a conforming change to provide a cross reference to the new firearms background check requirements in § 73.19 for armed security personnel. Additionally, the NRC would provide implementation schedule information for future licensees. This conforming change is identical to the conforming changes proposed to §§ 73.46 and 73.55 for Cat. I SSNM and power reactor facilities, respectively, in the February 2011 proposed rule (see Sections V.F and V.G at pp 6221 and 6222 of that *Federal Register* notice).

V. Guidance

The NRC prepared a new draft regulatory guide (DG), DG-5020, “Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73” (ADAMS Accession No. ML100321956), which contains detailed guidance on the implementation of the proposed requirements for applying for enhanced weapons and conducting firearms background checks. The DG was made available for public comment on February 3, 2011 (76 FR 6086). Public comments and supporting materials related to DG-5020 can be found on <http://www.regulations.gov> by searching on Docket ID NRC-2011-0015.

However, DG-5020 did not include at-reactor ISFSIs under the applicability section; rather, the DG reserved a section for additional facilities to be added by future rulemakings or Commission orders. The addition of at-reactor ISFSIs facilities to the DG as an eligible class of licensees to receive preemption authority would not appreciably change the guidance contained in the DG. A licensee with an at-reactor ISFSI would have to take the same steps to request this authority as the facilities currently listed in the DG (i.e., power reactor and Cat. I SSNM facilities).

The NRC will issue a final regulatory guide coincident with the publication of a final rule that will include at-reactor ISFSIs in the applicability section of DG-5020 so that it conforms to the requirements of the supplemental proposed rule. Since those conforming changes to the DG do not constitute a significant change to the guidance, the NRC has determined that further public and stakeholder opportunity to comment on DG-5020 is not necessary for this supplemental proposed rule notice.

VI. Criminal Penalties

For the purposes of Section 223 of the AEA, as amended, the Commission is proposing to amend 10 CFR part 73 under Sections 161b, 161i, or 161o of the AEA. Criminal penalties, as they apply to regulations in 10 CFR part 73, are discussed in § 73.81. The new §§ 73.18 and 73.19 are issued under Sections 161b, 161i, or 161o of the AEA. Violations of these new sections are subject to possible criminal penalties; and therefore they are not included in § 73.81(b).

VII. Compatibility of Agreement State Regulations

Under the “Policy Statement on Adequacy and Compatibility of Agreement States Programs,” approved by the Commission on June 20, 1997, and published in the FR (62 FR 46517; September 3, 1997), this supplemental proposed rule is classified as compatibility Category “NRC” and new §§ 73.18 and 73.19 are designated as Category “NRC” regulations. Compatibility is not required for Category “NRC” regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the CFR, and although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State’s administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Availability of Documents

The NRC is making the documents identified in the following table available to interested persons through one or more of the following methods as indicated.

Document	PDR	Web	NRC Library (ADAMS)
Firearms Guidelines	X	X	ML082560848
Environmental Assessment (October 2006 proposed rule)	X	X	ML061920093
Regulatory Analysis Regulatory Analysis—appendices (October 2006 proposed rule)	X	X	ML061380803 ML061380796 ML061440013
Information Collection Analysis	X	X	ML092640277
NRC Form 754	X	X	ML092650459
Commission: SECY-08-0050 (April 17, 2008)	X	X	ML072920478
Commission: SECY-08-0050A (July 8, 2008)	X	X	ML081910207
Commission: SRM-SECY-08-0050/0050A (August 15, 2008)	X	X	ML082280364
Letter Opinion from Bureau of Alcohol, Tobacco, Firearms, and Explosives' Office of Enforcement on the Transfer of Enhanced Weapons (January 5, 2009)	X	X	ML090080191
Proposed Enhanced Weapons, Firearms Background Checks, and Security Event Notifications rule (February 3, 2011)	X	X	ML103410132
DG-5020 "Applying for Enhanced Weapons Authority, Applying for Preemption Authority, and Accomplishing Firearms Background Checks under 10 CFR Part 73" (February 3, 2011)	X	X	ML100321956
Letter of Christopher E. Earls, on Behalf of Nuclear Energy Institute, on the proposed "Enhanced Weapons, Firearms Background Checks and Security Event Notifications" rule, Request for 90-Day Extension to Comment Period (February 15, 2011)	X		ML110480470
Diablo Canyon, Units 1 and 2, Independent Spent Fuel Storage Installation, Application for Stand-Alone Preemption Authority Under 42 U.S.C. 2201a (December 22, 2011)	X		ML113610556
Commission: SECY-12-0027	X	X	ML113130015

(February 17, 2012)			
Commission: SRM-SECY-12-0027 (May 3, 2012)	X	X	ML12124A377
NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4 (September 30, 2004)	X	X	ML042820192

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274), requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the supplemental proposed rule with respect to the clarity and effectiveness of the language used.

X. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this supplemental proposed rule, the NRC proposes to use standards from applicable firearms standards developed by nationally recognized firearms organizations or standard setting bodies or from standards developed by 1) Federal agencies, such as the U.S. Department of Homeland Security's Federal Law Enforcement Training Center, the U.S. Department of Energy's National Training Center, and

the U.S. Department of Defense; 2) State law-enforcement training centers; or 3) State Division (or Department) of Criminal Justice Services (DCJS) Training Academies. The NRC invites comment on the use of consensus standards.

XI. Finding of No Significant Environmental Impact

In the proposed rule published on February 3, 2011, the Commission determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of the environmental assessment for this supplemental proposed rule is that there will be no significant offsite impact to the public from this action. Availability of the environmental assessment is provided in Section VIII, "Availability of Documents," of this document. Due to the nature of the changes to the firearms background checks and enhanced weapons provisions presented in this supplemental proposed rule, the assumptions in the February 2011 proposed rule have not changed. Accordingly, the Commission is not seeking additional comments on the environmental assessment.

XII. Paperwork Reduction Act Statement

The proposed rule published on February 3, 2011 (76 FR 6200), would impose new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C 3501, et seq.). These new or amended information collection requirements were submitted to the Office of Management and Budget (OMB) for review under clearance

numbers 3150-0002 and 3150-0204. The existing requirements for part 73 were previously approved by OMB, approval number 3150-0002.

This supplemental proposed rule does not contain new or amended information collection requirements not already identified in the February 3, 2011, proposed rule. However, it would apply these requirements to the at-reactor ISFSI class of designated facilities. The estimated number of respondents and licensee burden remain unchanged from the February 2011 proposed rule. The inclusion of at-reactor ISFSI facilities will be reflected in the revised OMB clearance package prepared for the final rule.

The NRC is seeking public comment on the potential impact of the information collections contained in this supplemental proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package for the proposed rule may be viewed free of charge at the NRC PDR, One White Flint North, 11555 Rockville Pike, Room O1-F21, Rockville, Maryland 20852. The OMB clearance package and supplemental proposed rule are available at the NRC's Web site, <http://www.nrc.gov/public-involve/doc-comment/omb/> for 30 days after the signature date of this document.

Send comments on any aspect of these proposed regulations related to information collections, including suggestions for reducing the burden and on the above issues, by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]** to the Information

Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 205550001, or by e- mail to INFOCOLLECTS.Resource@nrc.gov; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0002 and 3150-0204), Office of Management and Budget, Washington, DC 20503. You may also e-mail comments to Chad_S_Whiteman@omb.eop.gov or comment by telephone at 202-395-4718.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis

The NRC prepared a draft regulatory analysis for the proposed rule published on February 3, 2011, (see Section VIII, “Availability of Documents,” of this document). The analysis examined the costs and benefits of the Implementation of Section 161A of the AEA. The regulatory analysis has been updated to reflect the addition of at-reactor ISFSI facilities.

The NRC is taking action to conform implementing regulations to the Firearms Guidelines issued by the Commission, with the approval of the U.S. Attorney General. The requirements identified by this supplemental proposed rule were also identified in the February 2011 proposed rule. In this regulatory analysis, the NRC is providing a summary of the cost and benefit estimates from the February 2011 proposed rule and noting the changes necessitated by this supplemental proposed rule. The NRC considers the costs and benefits associated with applying for enhanced weapons to be unchanged from those described by the draft regulatory

analysis in the February 2011 proposed rule, as the plans and analysis required to accompany an application have not changed. However, additional requirements have been added because of the addition of at-reactor ISFSI facilities. These proposed regulations have been developed to be consistent with the issued Firearms Guidelines. This regulatory analysis was developed following the guidance contained in NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Revision 4, issued September 2004 (ADAMS Accession No. ML042820192).

1. Statement of the Problem and Objective

The NRC is proposing regulations that would implement its authority under Section 161A of the AEA and revise existing regulations governing security event notifications. On September 11, 2009, with the approval of the U.S. Attorney General, the NRC published the Firearms Guidelines (74 FR 46800); these guidelines relate to the NRC's implementation of the new statutory authority.

The NRC proposed new regulations on February 3, 2011 (76 FR 6200), that would implement the new statutory authority. The NRC is now proposing further revisions that will address the voluntary application for enhanced weapons and the mandatory firearms background checks under Section 161A to include as a class of designated facilities called at-reactor ISFSIs.

2. Identification and Analysis of Alternative Approaches to the Problem

Because this rulemaking is in response to the statutorily mandated provisions of Section 161A of the AEA and the direction provided by the Firearms Guidelines issued by the Commission, there are no acceptable alternatives to the proposed rulemaking. Application for enhanced weapons authority and preemption authority under Section 161A is voluntary;

however, licensee and certificate holder compliance with the firearms background checks under Section 161A is mandatory for certain designated classes of licensees. Consequently, the no-action option is used only as a basis against which to measure the costs and benefits of this rulemaking.

3. Estimation and Evaluation of Values and Impacts

In general the parties that would be affected by this supplemental proposed rule are the licensees and certificate holders (there is no impact on applicants since they are not subject to the firearms background check requirements), the NRC, the public surrounding the plants, the on-site employees of the licensees and certificate holders, the FBI, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).

The following attributes are expected to be affected by this rulemaking. Their impacts are quantified where possible. Impacts to accident-related attributes are qualified because estimates of occurrences of possible attacks and their successful repulsions are unknown. Further, even if reliable estimates were available, they would be considered Safeguards Information and not to be released for public dissemination.

- Safeguards and Security Considerations – The proposed actions regarding access to enhanced weapons and mandatory firearms background checks will comply with statutory requirements and provide high assurance that public health and safety and the common defense and security will be enhanced because of licensees' and certificate holders' increased ability to repulse an attack.
- Industry Implementation – The supplemental proposed rule would require licensees and certificate holders with at-reactor ISFSI facilities to subject their security personnel to a fingerprint-based background check and a firearms background check against the NICS. Also, the rule would give licensees and certificate holders in Commission-designated classes of facilities the option to apply for combined enhanced weapons authority and preemption authority

or standalone preemption authority. If a licensee or certificate holder is so inclined, it must submit plans and analysis to the NRC on their proposed deployment of enhanced weapons. The NRC must then act on the request. If the NRC approves the request, a licensee or certificate holder would apply to ATF to transfer the authorized enhanced weapons to its facility. Industry would need to develop procedures to comply with these requirements.

For purposes of this analysis, the NRC staff assumed that all licensees and certificate holders who fall within the proposed designated classes of facilities would take advantage of making use of enhanced weapons protection (i.e., 65 operating power reactor sites (which includes 53 at-reactor ISFSI facilities), 15 decommissioning power reactor sites, and 2 Cat. I SSNM facilities for a total of 82 facilities). The staff assumed that the licensee's or certificate holder's security personnel required to protect the operating power reactor site would also protect any at-reactor ISFSI facility without any increase in onsite staff. Since the total number of facilities is the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry implementation cost and assumptions have not changed and are summarized in Table 1.

Table 1

Enhanced Weapons Costs	
Enhanced weapons cost per site	\$50,000
1/2 staff year to change security, training and qualification, contingency response plans and security event notification reports and to develop the weapons safety assessment and submit these documents to the NRC for its review and approval per site	\$80,000
1/4 staff year to complete ATF paperwork, acquire the enhanced weapons, develop new training standards and then train security personnel, and deploy the weapons per site	\$40,000
Total individual site's implementation cost for the voluntary enhanced weapons regulations	\$170,000
Total enhanced weapons implementation cost for the industry¹	\$13,940,000

¹ Please note that throughout this analysis sums may not equal shown total values because of rounding. Also, this cost analysis does not include any transfer tax payments required from a licensee to register an enhanced weapon with ATF under the National Firearms Act (26 U.S.C. Chapter 53), since those costs fall under ATF's sole regulatory purview.

Firearms Background Checks Costs	
1/6 staff year to establish a program for the mandatory firearms background checks per site	\$26,700
Total program cost for mandatory firearms background checks to industry¹	\$2,190,000
NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each operating reactor and Cat. I SSNM facility	\$11,400
NRC fees and staff time to complete NRC Form 754 for the mandatory firearms background checks for each decommissioned reactor site	\$5,700
Total industry cost for performing the first-time background checks	\$849,000
Total industry implementation costs	\$16,979,000

- Industry Operation – Enhanced weapon inventories' requirements of the February 2011 proposed rule, both monthly and semi-annually, would result in operating expenses for industry. Since the total number of facilities, including sites with at-reactor ISFSIs, are the same as was used in the draft regulatory analysis in the February 2011 proposed rule, the industry inventory cost and assumptions have not changed and are summarized in Table 2.

Table 2

Annual Enhanced Weapons Costs	
Monthly and semi-annual automatic weapon inventories cost per site	\$5,600
Total enhanced weapons implementation cost for the industry	\$460,000
Total enhanced weapons implementation cost for the industry with a 7 percent discount rate over remaining lifetime	\$6,100,000
Total enhanced weapons implementation cost for the industry with a 3 percent discount rate over remaining lifetime	\$11,200,000
Annual Firearms Background Checks Costs	
Annual mandatory firearms background checks per site	\$3,800
Total program cost for mandatory firearms background checks to industry with a 7 percent discount rate over remaining lifetime	\$3,401,000
Total program cost for mandatory firearms background checks to industry with a 3 percent discount rate over remaining lifetime	\$6,468,000

With respect to the security event notification reporting requirements, cyber and physical intrusions, suspicious activity reports, unauthorized operation or tampering events, reporting enhanced weapons being lost or stolen or adverse ATF findings, and the impact of events requiring entry in the safeguards event log the addition of at-reactor facilities will not have an impact on this analysis.

The total industry operating costs are the sum of the recurring inventory requirements (\$6.1 million given the 7 percent real discount rate and \$11.2 million with the 3 percent rate), the background checks (\$3.7 million at 7 percent and \$6.5 million at 3 percent), and the security event notification reports (\$15.1 million using the 7 percent rate and \$28.6 million with the 3 percent rate). This total is estimated to range from \$24.9 million (7 percent) to \$46.3 million (3 percent rate) which is unchanged from the February 2011 proposed rule.

- NRC Implementation – The NRC’s implementation costs include the labor cost for the development of the final rule and the supporting regulatory guidance (two regulatory guides and the weapons safety assessment). The NRC would also need to develop appropriate inspection procedures to confirm compliance with this rule. As with the cost associated with the industry implementation, the addition of the at-reactor facilities will not increase the labor cost to the NRC beyond what was outlined in the February 2011 proposed rule. The NRC’s implementation costs are summarized in Table 3.

Table 3

NRC Implementation Costs	
Develop final rule, final regulatory guidance, and inspection procedures	\$280,000
NRC review of each licensee’s and certificate holder’s security plan, training and qualification plan, contingency response plan, weapons safety assessment, and one round of Requests for Additional Information questions	\$3,280,000
Total NRC Implementation Costs	\$3,600,000

- NRC Operation – The NRC would need to inspect the licensees’ and certificate holders’ periodic inventories, recordkeeping, and training and qualification of enhanced weapons as a result of this rule. The addition of the at-reactor facilities will not increase the operational cost to the NRC beyond what was assumed in the February 2011 proposed rule. The NRC’s operational costs are summarized in Table 4.

Table 4

NRC Inventory Inspection Costs	
1 st year of NRC inspections of licensee’s and certificate holder’s automatic weapon inventories	\$131,200
Annual NRC inspections of licensee’s and certificate holder’s automatic weapon inventories after 1 st year	\$65,600
Total NRC costs for inspections of licensee’s and certificate holder’s automatic weapon inventories of the industry with a 7 percent discount rate over remaining lifetime	\$934,000
Total NRC costs for inspections of licensee’s and certificate holder’s automatic weapon inventories of the industry with a 3 percent discount rate over remaining lifetime	\$1,665,000
NRC Records Inspection Costs	
1 st year of NRC record inspections of licensee’s and certificate holder’s background checks	\$131,200
Annual NRC record inspections of licensee’s and certificate holder’s background checks after 1 st year	\$65,600
Total NRC costs for record inspections of licensee’s and certificate holder’s background checks of the industry with a 7 percent discount rate over remaining lifetime	\$934,000
Total NRC costs for record inspections of licensee’s and certificate holder’s background checks of the industry with a 3 percent discount rate over remaining lifetime	\$1,665,000
NRC’s total operating costs with a 7 percent discount rate	\$1,900,000
NRC’s total operating costs with a 3 percent discount rate	\$3,300,000

- Regulatory Efficiency – The proposed action would result in enhanced regulatory efficiency through regulatory and compliance improvements based upon statutory mandates involving the voluntary possession of enhanced weapons and mandatory firearms background checks at power reactor facilities, at-reactor ISFSIs, and Cat. I SSNM facilities. The proposed action would also result in enhanced regulatory efficiency involving the NRC’s ability to monitor

ongoing security events at a range of licensed facilities, and the ability to rapidly communicate information on security events at such facilities to other NRC-regulated facilities and other government agencies, as necessary.

- Public Health (Accident) – The proposed action could reduce the risk that public health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Occupational Health (Accident) – The proposed action could reduce the risk that occupational health will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Off-Site Property – The proposed action could reduce the risk that off-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- On-Site Property – The proposed action could reduce the risk that on-site property will be affected by radiological releases because of the increased likelihood of a successful repulsion of an attack.
- Other Government Agencies – The FBI would be affected by this rule because of its role in processing the mandatory fingerprint checks and firearms background checks the statute requires. The ATF would be affected by this rule because of its involvement with the approval to transfer enhanced weapons to and from an authorized NRC licensee or certificate holder.

Note: The FBI's fees for fingerprinting checks are incorporated within the NRC's fee previously discussed. The FBI does not charge a fee for processing firearms background checks. Also, as previously noted in the February 2011 proposed rule, the ATF taxes to transfer enhanced weapons are not included in this analysis.

Attributes that are *not* expected to be affected under any of the rulemaking options include the following: occupational health (routine); public health (routine); environmental considerations; general public; improvements in knowledge; and antitrust considerations.

4. Presentation of Results

Section 161A of the AEA requires several modifications to 10 CFR part 73. The pertinent sections and appendices which are being revised in this supplemental proposed rule are §§ 73.2, “Definitions,” 73.18, “Authorization for use of enhanced weapons and preemption of firearms laws,” 73.19, “Firearms background checks for armed security personnel,” and 73.51, “Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.”

The fundamental incentive for a licensee or certificate holder to choose to obtain enhanced weapons is to increase their defensive capabilities to provide high assurance that public health and safety and the common defense and security will be adequately protected from any attempts at radiological sabotage. A licensee’s or certificate holder’s decision to apply for enhanced weapons authority is voluntary. They must evaluate for their specific site whether the costs and benefits of using enhanced weapons are appropriate in general; and if appropriate in general, which specific types of weapons are appropriate for their particular site and protective strategy. The firearms background checks will provide assurance that security personnel possessing enhanced weapons are not barred under Federal and State law from receiving, possessing, transporting, or using any covered weapons and ammunition. The NRC staff notes that while licensees and certificate holders would be required to pay an excise tax when transferring enhanced weapons, the tax is not considered a cost of this proposed rule because it is a result of ATF regulations.

The total industry enhanced weapons implementation costs is \$13,940,000. The total enhanced weapons mandatory background checks program costs to the industry is \$2,190,000,

and the total first-time background checks for the industry is \$849,000. The sum of the total industry implementation cost is \$17.0 million. The industry operating costs for this supplemental proposed rule when discounted as flows of funds and based on the assumed lengths of lives of the various facilities ranged from \$9.5 million to \$17.7 million, given the 7 percent and 3 percent real discount rates, respectively.

The total costs to industry, including both implementation and operating expenses for this supplemental proposed rule are estimated to range from \$26.5 million to \$34.7 million, again given the 7 percent and 3 percent real discount rates, respectively.

The NRC's implementation costs are almost \$3.6 million. The recurring or annual costs are calculated to have a present value of \$1.9 million (7 percent rate) to \$3.3 million (3 percent rate). Therefore, the total estimated NRC costs range from about \$5.5 million (7 percent rate) to \$6.9 million (3 percent rate).

The total quantitative costs estimates for this supplemental proposed rulemaking are estimated to be from \$32.0 million (7 percent) to \$41.6 million (3 percent).

- Disaggregation

In order to comply with the guidance provided in Section 4.3.2 (Criteria for the Treatment of Individual Requirements) of the NRC's Regulatory Analysis Guidelines, the NRC conducted a screening review to ensure that the aggregate analysis does not mask the inclusion of individual rule provisions that are not cost-beneficial when considered individually and not necessary to meet the goals of the rulemaking. Consistent with the Regulatory Analysis Guidelines, the NRC evaluated, on a disaggregated basis, each new regulatory provision expected to result in incremental costs. Given that the NRC is required to comply with Section 161A of the AEA, the NRC believes that each of these provisions is necessary and cost-justified based on its resulting qualitative benefits, as previously discussed.

5. Decision Rationale

Relative to the “no-action” alternative, the supplemental proposed rule would cost the industry from around \$26.5 million to \$34.7 million over the average lifetime of the plants. The total NRC costs would range from \$5.5 million to slightly under \$7 million. Total costs of the supplemental proposed rule are estimated to range from around \$32 million to \$42 million. The requirements in this supplemental proposed rule are the result of the new Section 161A of the AEA. The NRC concluded that for all of these requirements, and their corresponding costs, the proposed approach is appropriate.

Although the NRC did not quantify the benefits of this rule, the staff did qualitatively examine benefits and concluded that the rule would provide safety and security-related benefits. Offsetting this net cost, the NRC believes that the rule would result in substantial non-quantified benefits related to safety and security, as well as enhanced regulatory efficiency and effectiveness. Therefore, the NRC believes that the rule is cost-justified for several qualitative reasons. First, the supplemental proposed rule would provide increased defensive capability of licensees and certificate holders and thus would increase the assurance that a licensee can adequately protect an at-reactor ISFSI facility against an external assault. Second, the supplemental proposed rule would provide a mechanism to accomplish a statutory mandate to verify that security officers protecting such facilities are not disqualified under Federal or State law from possessing or using firearms and ammunition. Lastly, as previously indicated, application for enhanced weapons authority and preemption authority under Section 161A is voluntary.

Based on the NRC's assessment of the costs and benefits of the supplemental proposed rule on licensee and certificate holder facilities, the agency has concluded that the supplemental proposed rule provisions would be justified.

6. Implementation

The final rule is to take effect 60 days after publication in the FR. A compliance date of 180 days after publication of the final rule will also be established for some provisions of this rule. The NRC staff does not expect this rule to have any impact on other requirements.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. With respect to the enhanced weapons and firearms background check provisions, this supplemental proposed rule affects only the licensing and operation of nuclear power reactors, at-reactor ISFSIs, and fuel cycle facilities authorized to possess and use Category I quantities of SSNM. The companies that own or operate these facilities or conduct these activities do not fall within the scope of the definition of “small entities” presented in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XV. Backfitting and Issue Finality

The NRC evaluated the aggregated set of requirements in this supplemental proposed rule that constitute backfitting in accordance with 10 CFR 50.109, 70.76, 72.62, and the finality provisions in 10 CFR Part 52. The NRC’s evaluation of changes in accordance with 10 CFR 10.109, 70.76, and the finality provisions in 10 CFR part 52 is described in the draft regulatory analysis on the proposed rule published on February 3, 2011. The Availability information for the draft regulatory (and backfit) analysis is provided in Section VIII, “Availability of Documents,” of this document. This analysis examined the costs and benefits of the alternatives considered

by the NRC. The regulations in 10 CFR 72.62 pertain to changes in requirements for ISFSI facilities, which is the subject of the supplemental proposed rule. However, the supplemental proposed rule will not change the requirements from the proposed rule; it simply applies the proposed requirements to an additional class of facilities. Therefore the evaluation of changes presented in the proposed rule from February 2011 also applies to this supplemental proposed rule and the evaluation is in accordance with 10 CFR 72.62.

The provisions of this supplemental proposed rule do not constitute backfitting because they are voluntary in nature, and would therefore not impose modifications or additions to existing structures, components, or designs, or existing procedures or organizations. These provisions include those related to application for the use of enhanced weapons and/or preemption authority. Other provisions of the rule implementing Section 161A of the AEA, such as the mandatory firearms background checks, are not backfits because they implement mandatory provisions required by statute.

To the extent that some of the specific implementing details of the firearms background checks described in this proposed rule are not specifically mandated by statute, or the Firearms Guidelines issued by the Commission with the approval of the U.S. Attorney General, the Commission believes that such measures are essential for the effective implementation of the rule's requirements, and thus necessary for the adequate protection to the health and safety of the public and are in accord with the common defense and security.

Therefore, for the reasons previously stated, a backfit analysis is not required and has not been completed for any of the provisions of this supplemental proposed rule.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C 553; the NRC proposes to amend 10 CFR 73 and proposes to further amend 10 CFR part 73, as proposed to be amended at 76 FR 6200, February 3, 2011, as follows:

PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act sections 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sections 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act section 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005). Section 73.1 also issued under Nuclear Waste Policy Act sections 135, 141 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note).

2. In § 73.2, paragraph (a), a definition for “At-reactor independent spent fuel storage installation” is added in alphabetical order to read as follows:

§ 73.2 Definitions.

* * * * *

(a) * * *

At-reactor independent spent fuel storage installation or at-reactor ISFSI means an ISFSI whose physical security program is conducted as a support activity of the co-located power reactor facility licensed under parts 50 or 52 of this chapter.

* * * * *

3. In § 73.18, paragraph (c), as proposed to be added at 76 FR 6233, February 3, 2011, is revised to read as follows:

§ 73.18 Authorization for use of enhanced weapons and preemption of firearms laws.

* * * * *

(c) *Applicability.* (1) Stand-alone preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission pursuant to 42 U.S.C. 2201a –

(i) Power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (Gy) (100 Rad) per hour at a distance of 1 meter (m) (3.3 feet [ft]), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

(2) Combined enhanced-weapons authority and preemption authority. The following classes of facilities, radioactive material, or other property are designated by the Commission under 42 U.S.C. 2201a –

(i) Power reactor facilities;

(ii) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gy (100 Rad) per hour at a distance of 1 m (3.3 ft), without regard to any intervening shielding; and

(iii) At-reactor independent spent fuel storage installations.

* * * * *

4. In § 73.19, paragraph (c), as proposed to be added at 76 FR 6237, February 3, 2011, is revised to read as follows:

§ 73.19 Firearms background checks for armed security personnel.

* * * * *

(c) *Applicability.* For the purposes of firearms background checks, the following classes of facilities, radioactive material, or other property are designated by the Commission at 42 U.S.C. 2201a –

(1) Power reactor facilities;

(2) Facilities authorized to possess or use a formula quantity or greater of strategic special nuclear material, where the material has a radiation level less than or equal to 1 Gray (100 Rad) per hour at a distance of 1 meter (3.3 feet), without regard to any intervening shielding; and

(3) At-reactor independent spent fuel storage installations.

* * * * *

5. In § 73.51, paragraph (b)(4) is added to read as follows:

§ 73.51 Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.

* * * * *

(b) * * *

(4)(i) The licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons.

(ii) For licensees who are issued a license after **[effective date of final rule]**, the licensee shall ensure that the firearms background check requirements of § 73.19 of this part are met for all members of the security organization whose official duties require access to covered weapons or who inventory enhanced weapons. Additionally and notwithstanding the implementation schedule provisions of § 73.19(b), such licensees shall ensure that the firearms background check requirements of § 73.19 are satisfactorily completed within 180 days of the issuance of the license, or within 180 days of the implementation of a protective strategy that uses covered weapons, whichever is later.

(iii) The provisions of this paragraph are only applicable to licensees subject to this section who store spent nuclear fuel in an at-reactor ISFSI.

* * * * *

Dated at Rockville, Maryland, this 7th day of December, 2012.

For the Nuclear Regulatory Commission.

R. W. Borchardt,
Executive Director
for Operations.

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